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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,137	02/18/2004	Floyd Backes	160-025	3361
34845 7590 02/05/2009 Anderson Gorecki & Manaras LLP 33 NAGOG PARK ACTON, MA 01720				
EXAMINER				
BEAMER, TEMICA M				
ART UNIT		PAPER NUMBER		
2617				
NOTIFICATION DATE		DELIVERY MODE		
02/05/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/781,137

**Applicant(s)**

BACKES ET AL.

**Examiner**

TEMICA M. BEAMER

**Art Unit**

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☒ Claim(s) 3 and 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 9/15/2008 have been fully considered but they are not persuasive. Applicant argues that Whelan fails to disclose a fixed location device that has logic that detects another fixed location device is using the same radio frequency channel and in response to that detection, adjusting transmit power to decrease interference with the other fixed device. The applicant states that such functionality is only performed by a mobile device and not the fixed device as claimed. The examiner, however, disagrees.

Whelan discloses channel coding and power management for wireless local area networks. Whelan further discloses a wireless network management server connected to access points. The function of the management server is to collect data and or make measurements related to the operation of the system. Measurements include signal quality of the signals received at the access points, system interference caused by access points using the same frequency, etc. (abstract, 0016) and based on the measurements and data collected, the transmission power of the access points are adjusted in an effort to reduce system interference (0105, 0136-0138).

Although, Whelan discloses the mobile station performing the above functions, Whelan also discloses in another embodiment wherein the fixed location device can perform that function as well. Whelan discloses wherein the network management

server can be contained in the access points (0116, 0120, 0136, 0145). Therefore, Whelan meets all of the limitations of claim 1.

The applicant also argues that Shpak is not prior art because it has a later filing date than the present application and further fails to disclose wherein transmit power is adjusted in response to a message received from a second fixed location device and wherein the message indicates the power level of the second device. The examiner, respectfully disagrees.

Shpak discloses a filing date of 4/22/2005, however, Shpak also has related CIP applications filed 8/7/2002 and 11/1/2002, both of which have earlier filing dates than the present application. It should be noted that specification of both of the CIP applications discusses similar features of the Shpak application presently used. (see Shpak, U.S. Patent No. 6,907,229, filed 11/1/2002, col. 2, line 58-col. 3, line 31).

Therefore, the examiner maintains that Whelan taken alone and in combination with Shpak meets the limitations of the invention as presently claimed. A rejection to the claims is set forth below.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Whelan, U.S. Patent Pub. No. 2005/0003827.

Regarding claim 1, Whelan discloses logic for detecting that a second access point is using the same radio frequency, logic, responsive to the detecting logic, for adjusting transmit power to decrease interference with the second access point detected to be using the radio frequency channel, wherein the detecting logic and the reducing transmit power logic are executed by the first access point (0116, 0119 and 0213).

The examiner is interpreting that the detecting logic and the reducing of the transmit power is performed by the first access point when the wireless network management server (10) is contained in the access points (0116, 0120). As previously stated, one of the functions of the network management server is to detect interference between access points. Once the interference is detected, the server (which can be implemented in the access points) reduces the power setting in both access points 8 and 9 for example (0213).

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whelan in view of Shpak, U.S. Patent Pub. No. 2005/0195786 and further in view of Dent, U.S. Patent No. 5,345,598.

Regarding claim 2, Whelan discloses the logic of claim 1 as described above. Whelan, however, fails to disclose logic for receiving messages from the second access point.

In a similar field of endeavor, Shpak discloses a spatial reuse of frequency channels in a WLAN. channels in a WLAN. Shpak further discloses wherein two or more fixed location devices (access points) can use transmit power control (TPC) messages among them in an effort to minimize interference. The TPC messages allow the access points to determine the power level of signals transmitted between the access points and mobile stations, thus determining interference in the system. The power can then be adjusted between the access to reduce interference in the system (0008, 0040).

At the time of invention, it would have been obvious to a person of ordinary skill in the art to modify Whelan with the teachings of Shpak for the purpose of further minimizing system interference.

The combination of Whelan and Shpak fail to disclose logic for maintaining a table including indications of the transmit power levels of other access points including the second access point and wherein the logic for adjusting transmit power does so in response to the indications in the table.

In a similar field of endeavor Dent discloses duplex power control in a communications network. Dent further discloses logic for maintaining a table including indications of the transmit power levels of other access points including the second access point and wherein the logic for adjusting transmit power does so in response to the indications in the table (col. 5, lines 6-15, col. 5, line 64-col. Col. 6, line 4, col. 6, lines 24-44).

At the time of invention, it would have been obvious to a person of ordinary skill in the art to further modify the combination of Whelan and Shpak with the teachings of Dent for the purpose of providing quick reference to power information.

#### ***Allowable Subject Matter***

6. Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **TEMICA M. BEAMER** whose telephone number is (571)272-7797. The examiner can normally be reached on Monday-Thursday (alternate Fridays) 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on (571) 272-7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Temica M. Beamer/  
Primary Examiner, Art Unit 2617



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